(3)

C.F.-10/-

IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No 2645 of 2005

PETITIONER :
PLAINTIFF

Virendra Kumar Shukla,
S/o Late Ramavatar Shukla,
Aged about 52 years,
R/o Nehru Nagar Ward, Raipur,
Tehsil & District Raipur (C.G.).

P.R. No. 2728/05
Presented by Shri R. Tripathi
Dated 20/6/05

- Versus -

RESPONDENTS:
DEFENDANTS

(1) UCO Bank,
A Body Corporate duly constituted under Banking Companies (Acquisition & Transfer of undertaking Act, 1970) having its Head Office at 10-Viplavi Trailokya Maharaj Sarni, Babon Road, Calcutta.

(2) UCO Bank, Raipur Branch of the Defendant/respondent No.1, G.E. Road, Raipur (C.G.).

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

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मामला क्रमांक ...W.P.No. 2645/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

21-9-2005

Shri B.D. Guru, counsel for the petitioner.

Shri Sachin Singh Rajput, counsel for respondents.

By this writ petition under Article 227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the order dated 14-10-1996 passed by the 6th Additional District Judge, Raipur in Civil Suit No. 96-A/1995 (Annexure-P/1) whereby learned Additional District Judge decided the issue No.3 against the petitioner herein holding that the Court fee paid by the petitioner herein is insufficient and he is required to pay ad valorem Court fee on the amount of Rs.3 lakhs.

Brief facts leading to filing of this writ petition are that on 2-4-91 the petitioner herein deposited a cheque bearing No.725323 dated 28-1-91 for Rs.3 lakhs issued by R.S. Shukla (brother of the petitioner herein) with respondent No.2 for credit in his savings account No.8296/34 and same was credited in the account on the same day. Thereafter, the petitioner herein issued a cheque for Rs.1 lakh on 25-4-91 on his aforesaid account in favour of Anuradha Shukla (wife). This cheque was dishonoured by the respondent Bank. On 28-4-91, on enquiry by the petitioner, he was informed that it so happened due to drawer's "Stop Payment" instruction dated 2-4-91.

Further case of the petitioner before the Court below was that once a cheque credited in the account of the petitioner respondent Bank was not entitled to re-transfer that amount in the account of Shri R.S. Shukla after receiving instructions from said Shukla regarding "Stop Payment" and the said action of respondents was illegal. Accordingly, he issued notice to the respondent Bank. When nothing brought result, the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petitioner herein filed a suit before the District Judge, Raipur with a prayer that it be declared that the debiting of Rs.3 lakhs in the plaintiff's Saving Bank Account by the defendant No.2 was unauthorized, illegal and *non est*, the defendants are bound to treat the credit entry of Rs.3 lakhs made on 2-4-91 in the plaintiff's Saving Bank Account as valid, operative and yet subsisting and to give effect to the same accordingly.

Written statement was filed on behalf of the respondents herein in which an objection was raised that the petitioner has not properly valued the suit and paid the Court fee correctly. On objection of the respondents herein, issue No.3 was framed by the trial Court and same was decided against the petitioner. It was held that the petitioner has paid insufficient Court fee. Being aggrieved by the said order of the Additional District Judge the petitioner has preferred this writ petition.

I have heard learned counsel for the parties.

Shri B.D. Guru, learned counsel appearing for the petitioner, argued that the decision of the trial Court is not in accordance with law, as the trial Court was required to take into consideration the pleadings of the plaint, and the petitioner valued the suit properly and paid proper Court fee. In para-8 of the plaint, it has been mentioned that the respondents were not entitled for debiting Rs.3 lakhs. Such debiting of Rs.3 lakhs in the plaintiff's account is unauthorized, illegal and non est, and hence ineffective and inoperative, and consequently this amount of Rs.3 lakhs is yet to be included in the credit balance of the plaintiff's account and the defendants are bound to give effect to the plaintiff's account accordingly. As per para-11 of the plaint the suit was valued for the purpose of both Court fee and jurisdiction at Rs.3 lakhs and the suit was only for declaration, fixed Court fee of Rs.30/- was paid. Therefore, in view of the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —३—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

above, the order of the trial Court is illegal and perverse. He placed reliance on a decision of the Hon'ble Apex Court in the matter of **S. Rm. Ar. S. Sp. Sathappa Chettiar Versus S. Rm. Ar. Rm. Ramanathan Chettiar** reported in **AIR 1958 SUPREME COURT 245.**

On the other hand, Shri Sachin Singh Rajput, learned counsel appearing for respondents argued that mere drafting of the plaint and words used in the plaint are not sufficient to decide the Court fee. The Court has to look into the relief sought for and the substance of the plaint. While supporting the order of the trial Court, he also placed reliance on the above decision of the Hon'ble Apex Court, on the judgment of the Hon'ble Apex Court in the matter of **SHAMSHER SINGH V. RAJINDER PRASHAD AND OTHERS** reported in **AIR 1973 SUPREME COURT 2384,** and also on the judgment of Full Bench of the Madhya Pradesh High Court in the matter of **Subhash Chand Jain V. Chairman, M.P. Electricity Board and others** reported in **2000 (3) M.P.L.J. 522.**

Having heard learned counsel for the parties, I have perused the impugned order, copy of the plaint and the relevant decisions cited by learned counsel for the parties.

In the matter of **S. Rm. Ar.S. Sp. Sathappa Chettiar** (Supra) the Hon'ble Apex Court held that:

> "The question of court-fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on the merits."

Facts of that case were that the plaintiff filed civil suit on the Original Side of the Madras High Court claiming partition of the joint family properties and an account in respect of the joint family assets managed

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by the respondent. The plaintiff claimed share in the joint family properties and the assets of the joint family properties. He valued the claim for account at Rs.1,000/- and a Court fee of Rs.112.70 was paid on the said amount on an ad valorem basis. In respect of the partition he paid fixed Court fee of Rs.100/-. For the purpose of jurisdiction, however, the plaintiff gave Rs.15,00,000/- as the value of his share. The Registry raised objections. The Registry raised objection after examining the plaint that the plaint should have been borne court fee under Section 7 (v) of the Court Fees Act in respect of the claim of partition, the appellant did not accept this view, and the matter was referred to the Master of the Court who was the Taxing Officer and the Master felt that the issue raised by the Registry was of some importance so, in turn, he referred the dispute to the Judge and ultimately it was held that Section 7 (v) of the Act was not applicable to the appellant's claim for partition. According to the learned Judges neither was Article 17-B of Schedule-II applicable. They held that the provisions of Section 7 (iv) (b) of the Act applied and that is why the appellant was directed to mention his value for the relief of partition under the said Section. Because, in the plaint the plaintiff had not specifically mentioned the value for the relief of partition claimed by him. He had merely stated that for the relief of partition claimed by him he was paying a court fee of Rs.100/- in accordance with Schedule-II, Article 17-B. All that he had done in the plaint was to value his total claim for jurisdiction at Rs.15 lakhs.

Thereafter the appellant offered to file an application for formal amendment of his plaint by substituting Rs.50,000/- in place of Rs.15,00,000/- for the jurisdictional value of his relief. The Hon'ble Apex Court held that 'the plaintiff should be allowed to state the amount of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Rs.50,000/- at which he values the relief sought by him under Section 7 (iv) (b) of the Act. Therefore, the above decision is of no help to the petitioner as in the above case the plaintiff himself amended his relief to Rs.50,000/- and that was allowed by the Hon'ble Apex Court.

In the matter of **Shamsher Singh** (Supra) the Hon'ble Apex Court held that:

> "The Court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for.

Similar point came up before the Full Bench of the Madhya Pradesh High Court in the matter of **Subhash Chand Jain** (Supra) in which Full Bench held that:

> ".....plaint has to be read as a whole. Allegations in the plaint including the substantive relief claim must be the basis for settling the Court fee payable by the plaintiff. Mere astuteness in drafting the plaint would not glaze the jurisdiction of Court for looking at the substance of the relief asked for. The nature of suit under Section 7 (iv) is such where the Legislature could not law down fixed standard thereby leaving it to the plaintiff to mention it. But where he attempts to under-value the plaint and reliefs, Court has to intervene. While doing so, concept of real money value forms integral part of Court enquiry where relief sought has real money value which can be objectively ascertained. Where a plaintiff has been made liable to pay specified amount and asked to pay the same and he claims to avoid it, obviously, he seeks relief to that effect and in case, he avoids payment of Court fee by drafting the plaint in such a way that results in under valuation of the plaint and the relief, it will be a case

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of arbitrary and unreasonable under-valuation which Court is bound to correct. Substantial relief asked for in the context of the facts of the case forms basis for settling correct Court fee payable in the cases."

Applying the above principle, if we look into the facts of the case filed by the petitioner, the case of the petitioner before the Court below was that amount of Rs.3 lakhs, which was credited to his Savings Account and thereafter on the instructions of R.S. Shukla who issued the cheque in favour of the petitioner, the said amount has been debited to the account of the petitioner, therefore, same action has been challenged by the petitioner in the plaint before the Court below. In para-9 of the plaint it has been mentioned that it is necessary to declare that the above said debiting of Rs.3 lakhs being unauthorized and illegal, the defendants are bound to treat the credit entry of Rs.3 lakhs made on 2-4-91 in the plaintiff's above said account, as valid, operative and yet subsisting and to give effect to the same accordingly in future transactions. In para-11 of the plaint it has been mentioned that the suit is valued for the purpose of both Court fee and jurisdiction at Rs.3 lakhs and as the suit is only for declaration, fixed Court fee of Rs.30/- is paid herewith. In para-13 (a) of the relief clause it has been mentioned that it be declared that the above said debiting of Rs.3 lakhs in the plaintiff's above said Saving Bank Account with the defendant No.2 being non est, unauthorized and illegal, the defendants are bound to treat the credit entry of Rs.3 lakhs made on 2-4-91 in the plaintiff's above said Saving Bank Account as valid, operative and yet subsisting and to give effect to the same accordingly.

Therefore, reading of the above paras makes it clear that in the sum and substance of the suit filed by the petitioner, he claims that the amount of Rs.3 lakhs which was credited in his account has been wrongly

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	debited and same should be credited in his account. In fact, his claim is about Rs.3 lakhs which he received from a cheque issued by R.S. Shukla and ultimately which was on the instructions of R.S. Shukla debited to the account of the petitioner. As per the settled law, the allegations in the plaint including the substantive relief claim must be the basis for settling the Court fee payable by the plaintiff. But where he attempts to under-value the plaint and reliefs, Court has to intervene. In doing so, concept of real money value forms integra part of Court enquiry where relief sought has real money value, which can be objectively ascertained. In this connection, sub-section (iv) (c) of Section 7 of the Act which relates to computation of fees payable in certain suits, envisages that "to obtain a declaratory decree or order, where consequential relief is prayed." The declaration asked for by the plaintiff cannot be granted without the relief for crediting the amount in the account of the petitioner, as such, the petitioner is required to pay ad valorem Court fee on the whole amount of Rs.3 lakhs against which he has sought declaration. In the result, I am of the opinion that the impugned order passed by 6th Additional District Judge, Raipur does not suffer from material irregularity or illegality and same requires no interference by this Court. The writ petition is, therefore, liable to be dismissed and the same is dismissed. Sd/- L.C.Bhadoo Judge	

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